

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 04-0150**  
**Sales and Withholding Tax**  
**Responsible Officer**  
**For the Tax Period December, 2000-May, 2002**

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**ISSUE**

**1. Sales and Withholding Tax-Responsible Officer Liability**

**Authority:** IC 6-2.5-9-3, IC 6-3-4-8(f), IC 6-8.1-5-1(b).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

**STATEMENT OF FACTS**

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed sales, withholding taxes, interest and penalty against the taxpayer as a responsible officer of a corporation that did not properly remit said taxes during the tax period December, 2000 through May, 2002. The taxpayer protested the assessment of tax and penalty. This Letter of Findings is based upon the documentation in the file.

**1. Sales and Withholding Tax-Responsible Officer Liability**

**Discussion**

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against taxpayer pursuant to IC 6-3-4-8(f), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

The taxpayer provided significant documentation evidencing that he left his association with the corporation by November 6, 2000. Since the taxpayer was not an employee, officer, or member of the corporation from December 2000 through May, 2002, the taxpayer cannot be held personally responsible for trust taxes that the corporation did not remit to the state.

### **Finding**

The taxpayer’s protest is sustained.